

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
3
4

RAFAEL RAMOS-MARTINEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 13-1547 (JAF)

(Crim. No. 01-638)

5
6 **OPINION AND ORDER**

7 Petitioner Rafael Ramos-Martínez (“Ramos-Martínez”) comes before the court
8 with a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct the sentence we
9 imposed in Crim. No. 01-638. (Docket No. 1.) Because Ramos-Martínez failed to obtain
10 certification from the First Circuit to file a successive petition, we deny the motion.

11 **I.**

12 **Background**

13 On August 30, 2001, Ramos-Martínez was indicted for conspiracy to distribute
14 large quantities of heroin, cocaine, and cocaine base in violation of 21 U.S.C. §841(a)(1)
15 and 846. (Crim. No. 01-638, Docket No. 2.) The indictment also included a forfeiture,
16 should Ramos-Martínez be convicted. Id. On April 16, 2002, Ramos-Martínez pleaded
17 guilty to violating 21 U.S.C. § 846. (Crim. No. 01-638, Docket No. 134.) On
18 November 21, 2002, Judge Laffitte sentenced Ramos-Martínez to four hundred months
19 imprisonment, to be served consecutively with the sentence imposed in Crim. No. 01-57-
20 7(PG), followed by six years of supervised release and a fine of one hundred dollars.
21 (Crim. No. 01-638, Docket No. 134.) On November 22, 2002, Ramos-Martínez filed a

1 notice of appeal. (Crim. No. 01-638, Docket No. 137.) On October 12, 2005, the First
2 Circuit entered judgment affirming his plea agreement and sentence.

3 On November 27, 2006, Ramos-Martínez filed a motion to vacate under 28 U.S.C.
4 § 2255. (Crim. No. 01-638, Docket No. 194.) Because Judge Laffitte retired, the case
5 was reassigned to our docket. (Crim. No. 01-638, Docket No. 198.) Ramos-Martínez
6 also filed a motion for retroactive application of the sentencing guidelines to his crack
7 cocaine offense. (Crim. No. 01-638, Docket No. 206.) On June 10, 2008, we denied
8 Ramos-Martínez's petition under Section 2255 because it had already begun as Civil
9 No. 06-2183 before Judge Delgado-Colón. (Crim. No. 01-638, Docket No. 210.) On
10 September 15, 2008, we denied Ramos-Martínez's motion to reduce his sentence
11 regarding the crack cocaine offense. (Crim. No. 01-638, Docket No. 217.) On
12 September 24, 2008, Ramos-Martínez gave notice that he was appealing our decision not
13 to reduce his sentence. (Crim. No. 01-638, Docket No. 218.) On May 29, 2009, Ramos-
14 Martínez's related section 2255 petition before Judge Delgado-Colón was dismissed with
15 prejudice. (Crim. No. 01-638, Docket No. 226.) On July 23, 2009, Ramos-Martínez's
16 appeal before the First Circuit was dismissed for lack of diligent prosecution. (Crim.
17 No. 01-638, Docket No. 228.)

18 On July 15, 2013, Ramos-Martínez filed the instant motion under 28 U.S.C.
19 § 2255 to vacate, set aside, or correct his sentence. (Docket No. 1.) On August 9, 2013,
20 the United States filed a response in opposition to his motion. (Docket No. 3.)

21 II.

22 Legal Standard

23 Before filing a second or successive motion under Section 2255, a defendant
24 "shall move the appropriate court of appeals for an order authorizing the district court to

1 consider the application.” 28 U.S.C. § 2244(b)(3)(A); see also, 28 U.S.C. § 2255 (“A
2 second or successive motion must be certified as provided in section 2244 by a panel of
3 the appropriate court of appeals....”). A district court lacks jurisdiction over a second or
4 successive petition unless the defendant obtains certification from the appropriate court
5 of appeals. Trenkler v. United States, 536 F.3d 85, 96 (1st Cir. 2008). Ramos-Martínez
6 submitted his first petition under Section 2255 on November 27, 2006, and the petition
7 was dismissed on May 29, 2009. (Civ. No. 06-2183-ADC-MEL, Docket Nos. 1, 21).
8 Ramos-Martínez has not obtained certification from the First Circuit to file a successive
9 petition and, therefore, we lack jurisdiction to rule on this motion.

10 III.

11 Certificate of Appealability

12

13 In accordance with Rule 11 of the Rules Governing § 2255 Proceedings, whenever
14 issuing a denial of § 2255 relief we must concurrently determine whether to issue a
15 certificate of appealability (“COA”). We grant a COA only upon “a substantial showing
16 of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make this showing,
17 “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s
18 assessment of the constitutional claims debatable or wrong.” Miller-El v. Cockrell, 537
19 U.S. 322, 338 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). While
20 Ramos-Martínez has not yet requested a COA, we see no way in which a reasonable
21 jurist could find our assessment of his constitutional claims debatable or wrong. Ramos-
22 Martínez may request a COA directly from the First Circuit, pursuant to Rule of
23 Appellate Procedure 22.

Conclusion

IT IS SO ORDERED.

San Juan, Puerto Rico, this 28th day of February, 2014.

S/José Antonio Fusté
JOSE ANTONIO FUSTE
U. S. DISTRICT JUDGE